

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-2, 5-8, 11-12, 17, 19-21 and 24-30 are pending in this application. Claims 17, 24 and 29 are amended. Claim 18 is cancelled. No claims are added. Claims 1, 17, 24 and 29 are the independent claims.

Rejections under 35 U.S.C. § 102

Little

Claims 29-30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Little et al. (hereinafter "Little"), U.S. Patent No. 5,858,974. Applicants respectfully traverse this rejection for the reasons detailed below.

On page 3 of the Office Action, the Examiner states that claim 29 does not recite any function of improving the immune system and Applicants do not point out any structural differences with the prior art. Applicants respectfully disagree and submit that Little does not teach or suggest all of the limitations of amended claim 29.

As stated previously, in Little, the Bactericidal/Permeability-Increasing Protein (BPI) has antifungal activity, which acts as an antibiotic, while the main function for the fungal immunomodulatory protein (FIP) of claim 29 is facilitating and improving the immune system, and strengthening the immunocyte. As BPI and FIP are totally different proteins, and their mechanisms against pathogens are also not the same, Applicants submit that

Little does not teach or suggest the fungal immunomodulatory protein as recited in claim 29.

However, in order to advance prosecution, Applicants have amended claim 29 and respectfully submit that Little does not teach or suggest “orally administering fungal immunomodulatory protein or protein fused with FIP to a subject, wherein the fungal immunomodulatory protein is encoded by a nucleic acid molecule including SEQ. ID NO. 1” as recited in claim 29.

The Applicants, therefore, respectfully request that the rejection to Claims 29-30 under 35 U.S.C. § 102(b) be withdrawn.

Rejoinder of Non-Elected Claims

Upon allowance of the elected claims, Applicants respectfully request rejoinder of withdrawn claims 1-2, 5-8, 11-12, 17, 19-21 and 24-28. As stated in MPEP § 821.04, in order to be eligible for rejoinder, a claim to a nonelected invention must depend from **or otherwise require all the limitations** of an allowable claim (Emphasis added). Therefore, withdrawal of the restriction requirement and rejoinder, examination, and allowance of claims 1-2, 5-8, 11-12, 17, 19-21 and 24-28 are respectfully requested.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

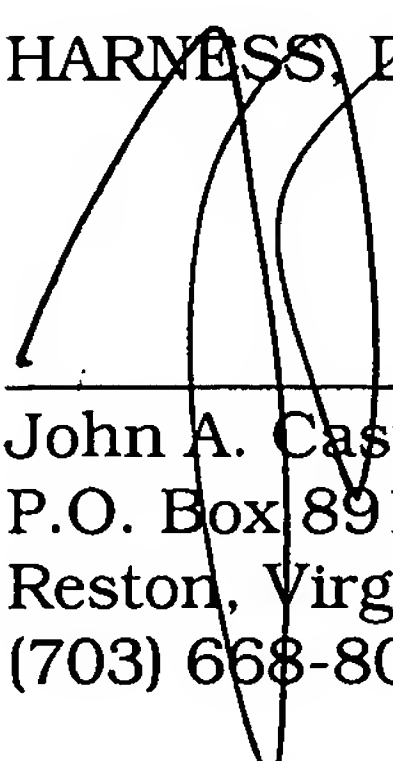
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Erin G. Hoffman, Reg. No. 57,752, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNES, DICKY, & PIERCE, P.L.C.

By



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